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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

KATRINA PERKINS STEINBERGER,
as Executor of the Estate of Charles A.
Perkins, deceased, and individually,

Plaintiff,

v.

INDYMAC MORTGAGE SERVICES, a
division of ONEWEST BANK, F.S.B., a
Federally Chartered Savings Bank;
DEUTSCHE BANK NATIONAL
TRUST COMPANY, as Trustee of the
INDYMAC INDX MORTGAGE LOAN
TRUST 2005-AR14; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware
Corporation; OCWEN LOAN
SERVICING, LLC, a Limited Liability
Company; KEELEY KRISTINE SMITH,
an Attorney licensed with the Arizona
State Bar; JOHN AND JANE DOES 1-
1000, XYZ CORPORATIONS 1-15;
ABC LIMITED LIABILITY
COMPANIES 1-15; and 123 BANKING
ASSOCIATIONS 1-15,

Defendants.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee for INDYMAC
INDX MORTGAGE LOAN TRUST
2005-AR14, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
2005-AR14,

Counterclaimant,

v.

Case No. 2:15-cv-00450-ROS

SUPPLEMENT TO

**PLAINTIFF'S RESPONSE TO
DEFENDANT KEELEY KRISTINE
SMITH'S MOTION TO DISMISS
SECOND AMENDED COMPLAINT
(DOC. 17)**

1 KATRINA PERKINS STEINBERGER, as
2 Executor of the Estate of Charles A.
3 Perkins, deceased, and individually,

4 Counterdefendants.

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6 DEUTSCHE BANK NATIONAL TRUST
7 COMPANY, as Trustee for INDYMAC
8 INDX MORTGAGE LOAN TRUST
9 2005-AR14, MORTGAGE PASS-
10 THROUGH CERTIFICATES SERIES
11 2005-AR14,

12 Third-Party Plaintiff,

13 v.

14 SAGUARO DESERT TRUST;
15 KATRINA PERKINS STEINBERGER, as
16 Executive Trustee of Saguaro Desert
17 Trust; M&I MARSHALL & ILLSLEY
18 BANK, a Wisconsin Banking Corporation;
19 QUALITY LOAN SERVICE
20 CORPORATION, a California
21 Corporation; RANCHO ALTA VIDA
22 HOEOWNERS' ASSOCIATION, an
23 Arizona Non-Profit Corporation; DOE
24 INDIVIDUALS OR ENTITIES 1-10;
25 UNKNOWN HEIRS AND DEVISEES
26 OF CHARLES A. PERKINS,
27 DECEASED,

28 Third-Party Defendants.

21 On May 6, 2015, this Court issued a Proposed Order regarding the Motion to
22 Remand filed by Plaintiff Steinberger (Doc. 23), and the Motion to Dismiss filed by
23 Defendant Smith (Doc.17). In that Order, the Court notified the parties that they should be
24 ready to argue these two Motions at the Scheduling Conference set the next day, May 7,
25 2015, at 11 a.m.

26 In reviewing the Order and preparing, Plaintiff Steinberger realized that she had
27 inadvertently failed to specifically address her claim against Defendant Smith pursuant to
28

1 A.R.S. § 33-420(C), in her Response (Doc. 29). Plaintiff is therefore submitting this
 2 supplement to her Response, Section III(E), in advance of the hearing.

3 Plaintiff has stated a claim against Defendant Smith pursuant to A.R.S. § 33-
 4 420(C), which provides:

5
 6 A person who is named in a document which purports to create an interest in,
 7 or a lien or encumbrance against, real property and who knows that the
 8 document is forged, groundless, contains a material misstatement or false
 9 claim or is otherwise invalid shall be liable to the owner or title holder for the
 10 sum of not less than one thousand dollars, or for treble actual damages,
 11 whichever is greater, and reasonable attorney fees and costs as provided in
 12 this section, if he willfully refuses to release or correct such document of
 13 record within 20 days from the date of a written request from the owner or
 14 beneficial title holder of the real property.

15 Smith is well aware that a claim has been made against her pursuant to this
 16 subsection. Smith was mailed a demand pursuant to A.R.S. § 33-420(C), on February 10,
 17 2015, at her work and home addresses, by certified and regular mail, that she release the
 18 Substitution of Trustee by a recording, within 20 days. *See* Doc. 12-5 at 5, 29, 43, 45 ¶¶
 19 12, 141, 228, 238; *see also* Letter to Keeley Kristine Smith dated February 10, 2015,
 20 attached hereto as Exhibit 1.¹ The certified letters were received and signed-for, at both
 21 locations. *See* certified mail receipts attached hereto as Exhibit 2.

22 In addition, Count Four for violation of A.R.S. § 33-420, specifically requests
 23 damages against Defendant Smith in the amounts set forth only in subsection (C).

24 The only requirements for stating a claim under this subsection of the statute is that
 25 Smith was named in the Substitution of Trustee² recorded against the Steinberger Property,
 26 and that Smith knew that the document was (1) forged; or (2) groundless; or (3) contained

27 ¹ The demand letter was not attached to the Second Amended Complaint (“SAC”) because
 28 it was written and mailed the day after the SAC was filed, but the SAC specifically stated
 that the demand was forthcoming. *See* Doc. 12-5 at 45 ¶ 238.

² The Court acknowledges that Smith is named in the Substitution, and Exhibit 21 bears
 this out, as well as the fact that it is recorded against the at-issue Property. *See* Doc. 42 at
 8:21-22; Doc. 12-6 at 94-99.

1 a material misstatement; or (4) contained a false claim; or (5) was otherwise invalid.
2 Steinberger alleged all these things. Doc. 12-5 ¶¶ 12, 141, 228, 238.

3 The claim under A.R.S. § 33-420(C) has nothing to do with Smith's "authority to
4 act," and such a claim does not require a breach of obligation under the Deed of Trust or
5 the deed of trust statutes. Therefore, A.R.S. § 33-807(E) and *Puzz v. Chase Home*
6 *Finance, LLC*, 763 F.Supp.2d 1116 (D.Ariz. 2011), do not apply, and Plaintiff has stated a
7 claim against Defendant Smith pursuant to A.R.S. § 33-420(C).

8 If the Court deems it necessary to more specifically state Steinberger's claim under
9 A.R.S. § 33-420(C), then Plaintiff hereby seeks leave to amend, to do so.

10
11 RESPECTFULLY SUBMITTED this 6th day of May, 2015.

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13 **BARBARA J. FORDE, P.C.**

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19 Copies of the foregoing served through
20 the ECF system on May 6, 2015:

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